

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
v.)	
)	Cr. No. 09-10166-MLW
RICHARD W. McDONOUGH,)	
Defendant.)	

MEMORANDUM AND ORDER

WOLF, D.J.

October 31, 2016

With its response to the October 19, 2016 Memorandum and Order the government filed, pursuant to Rule 7.2 of the Local Rules of the United States District Court for the District of Massachusetts, a Motion to Seal Attachment F to the Declaration of Sharon Kotch (the "Motion to Seal"). The government also submitted, under seal, a proposed redacted version of Attachment F to be made part of the public record if the Motion to Seal is allowed.

Attachment F is comprised of a letter faxed to the BOP on November 28, 2011, by McDonough's cardiologist, Dr. Sidney Alexander, and certain medical records concerning McDonough. The letter was sent to the BOP two days before McDonough began serving his sentence. These documents were relied upon by Ms. Kotch in deciding to reverse the initial decision of the Bureau of Prisons (the "BOP") to deny McDonough's request to participate in the BOP Residential Drug Treatment Abuse Program (the "RDAP") and, upon

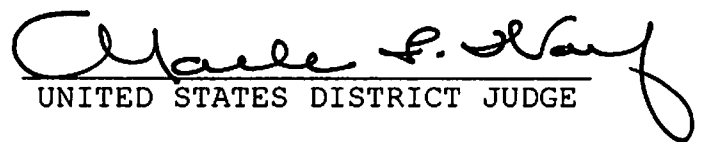
successful completion of it, to become eligible for a one-year reduction of the seven-year sentence imposed by this court for conspiring to commit extortion, mail fraud, and wire fraud.

The court agrees that, pursuant to the principles discussed in United States v. Kravetz, 706 F.3d 47 (1st Cir. 2013), limited redactions to Attachment F are justified. However, the court finds that the government's proposed redactions are excessive. For example, in his November 28, 2011 letter, Dr. Alexander characterizes McDonough as "alcohol dependent." However, that diagnosis, characterization, or term is not in the unredacted medical records he sent to the BOP. Nor do those records state that McDonough was ever recommended for, or received, treatment for a problem with alcohol. Rather, they indicate that the discussion between McDonough and his doctors concerning alcohol related to his need to try to lose weight, reduce his cholesterol, and lower his blood pressure.

Therefore, the Motion to Seal (Docket No. 877) is hereby ALLOWED in part and DENIED in part. The attached version of Attachment F, with redactions to protect the privacy interests of third parties and, to a limited extent McDonough, is being made part of the public record. See id., 706 F.3d at 61-64.

The BOP's response to the October 19, 2016 Memorandum and Order raises other questions, which will be addressed by the court in the future. The court notes, however, that the October 27,

2016 letter of BOP Regional Counsel Michael D. Tafelski, Esq. states that "a definitive statement surrounding the origins of the entry of 'weekly use' of crack/cocaine noted in the May 18, 2016 [McDonough] Progress Report the Court references on page 5 of the [October 19, 2016 Memorandum and] Order cannot be made at this time." Docket No. 876-1 (emphasis added). As explained in that Order, this issue is important to the court, and possibly to the Department of Justice as well. Therefore, it is hereby ORDERED that the BOP shall continue to attempt to ascertain who made the entry in McDonough's Progress Report concerning his reported use of cocaine and the basis for it, and supplement its response to the October 19, 2016 Order concerning this issue by November 3, 2016.


UNITED STATES DISTRICT JUDGE

Attachment F

to Declaration of Sharon Kotch, Docket No. 876-2

Redacted
October 31, 2016

Fax sent by 781 744 5261

CARDIOLOGY SECRETARY

11-20-11 09:34

Page 1/1



Lahey
CLINIC

Lahey Clinic Medical Center
41 Mall Road
Burlington, MA 01805

P 781 744.5100
www.lahey.org

November 28, 2011

A working hospital of Tufts University School of Medicine

Director of Health Services
FCI Fort Dix
Federal Correctional Institution
P.O. Box 38
Fort Dix, NJ 08640

Re: Richard McDonough, Reg. No. 27368-038

Dear Director,

I am writing on behalf of my patient, Richard McDonough, DOB [REDACTED] 1945, who has been under my care as his physician for 9 years. I have found him to be reliable as a reporter of his condition and compliant with medications and recommended treatment.

He is a 66 year old male with a history significant for the following:

1. High blood pressure (hypertension): Mr. McDonough's hypertension has been successfully treated with the following medication: Lisinopril (20mg daily) and Chlorthalidone Oral (25mg daily).
2. High Cholesterol: Mr. McDonough currently takes Crestor for high cholesterol.
3. Mr. McDonough has limited mobility in his left hand and can't lift heavy objects.
4. Acid Reflux Disease: Mr. McDonough is prescribed Omeprazole to address an acid reflux condition.
5. Generalized Anxiety Disorder: Mr. McDonough currently takes Ambien (20Mg) and Lorazepam (1mg). This is mentioned due to his upcoming period of incarceration and the fact that the conditions of his confinement may adversely impact his anxiety level.
6. Allergies to tree pollen and Tetracycline.
7. Alcohol Dependence: chart records dating to 2005 reflect that Mr. McDonough is
8. alcohol dependent. He has been advised repeatedly to curb his drinking as it is adversely affecting his health.

I hope this information is helpful to transition Mr. McDonough into your facility as seamlessly as possible. I am happy to be reached at my office if there is any further question or issue with which I can assist.

Sincerely,

Sidney Alexander
Sidney Alexander, M.D.
Cardiologist



Lahey
CLINIC

Lahey Arlington
37 Broadway
Arlington, MA 02474
(781) 841-0100

MCDONOUGH, RICHARD
DOB: [REDACTED] 1945

DOS: 12/18/2005

LC#: 1875125

Document Status: Final - Receipt

LAHEY CLINIC MEDICAL CENTER - Lahey Arlington
CGARL

NAME: MCDONOUGH, RICHARD
DATE: 12/19/2005
LCHC NO.: 1875125

Community Group Practice
GENERAL INTERNAL MEDICINE

MCDONOUGH, RICHARD 12/19/2005 LC#: 1875125
DOB: [REDACTED] 1945

OFFICE VISIT 12/19/05: Generally, he feels well. He travels a lot in conjunction with his job as a lobbyist. He sees Dr. Sidney Alexander for hypercholesterolemia. He denies chest pain or dyspnea. He has noted increased nocturia (twice a night) in the past year. He tries to walk on a regular basis.

PAST MEDICAL HISTORY: Testicular biopsy in 1975. Hospitalized with viral gastroenteritis in 1990. His last colonoscopy from 2002 was negative.

Present Medications:

Zetia 10 mg daily.
Zocor 20 mg daily.
Protonix 40 mg daily.

[REDACTED]

Drug Allergies: Tetracycline. He has been intolerant to high doses of statins because of muscle aching.

FAMILY HISTORY: [REDACTED]

SOCIAL HISTORY: A former smoker not in the past couple of years. Takes 4-6 drinks (primarily wine) a night during the week and up to 8-10 drinks on the weekends. He was remarried four or five years ago.

REVIEW OF SYSTEMS: He worries about his hearing.

Lahoy Arlington
37 Broadway

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(781) 841-0100

MCDONOUGH, RICHARD
DOB: [REDACTED] 845 LC#: 1878125
DOS: 12/18/2005

Document Status: Final - Receipt

PHYSICAL EXAMINATION: WT 201. BP 110/70. Heart rate 70 and regular.
Neck: Without bruits. No goiter. Lungs: Clear. Heart: S1 and S2
audible without murmur. Abdomen: Soft. Rectal: Guaiac-negative.
Prostate unremarkable.

ASSESSMENT:

- 1) Elevated cholesterol - blood studies to be done today.
- 2) Nocturia - screen PSA.
- 3) ? diminished hearing. He reports occasionally when he is in a group he has trouble distinguishing specific voices.

PLAN: Blood studies. Refer for hearing check.

John P Berkoben, MD
781-641-0100

JPB:sp
D: 12/20/2005 00:00:00
T: 12/20/2005 07:47:22
J: 0

CC:

THIS DOCUMENT WAS ELECTRONICALLY AUTHENTICATED BY John P Berkoben, MD ON
12/20/2005 08:23:49

Fax sent by : 781 744 5261

CARDIOLOGY SECRETARY

11-18-11 18:15 Pg: 4/15



MCDONOUGH, RICHARD
DOB: [REDACTED] 1945

DOB: 06/13/2007

LC#: 1875125

Document Status: Final - Receipt

LAHEY CLINIC MEDICAL CENTER - Burlington, MA.
CARD

NAME: MCDONOUGH, RICHARD

DATE: 06/13/2007

LCMC NO.: 1875125

6/13/2007

CARDIOLOGY

MCDONOUGH, RICHARD 06/13/2007 LC# 1875125

DOB: [REDACTED] 1945

VISIT ID: F05526718

20170081

Second Visit ID:

He has gained a lot of weight and admits to overeating and drinking in his business as a lobbyist at the state house. His wife has checked his blood pressure with their own cuff, never validated, and they have been around 150/100-90 and that is the main reason for his being here.

He has some aching of his joints and wonders if the Vioxx is responsible. I doubt it since he has no muscular component to this.

He is heavier. His blood pressure is 160/100 in the right arm and 140/90 in the left. I hear no bruits and the pulses are equally strong. Cardio examination is normal. He has peripheral pitting.

Weight loss is key and he will start a diet. We will recheck his bloods in 6 weeks and he will also check his blood pressure regularly and bring in the results along with the cuff to be validated. We will call me if his blood pressure is consistently above 160.

Sidney Alexander, MD
781-744-8461

UAT: dno

U: 06/13/2007 10:08:01

T: 06/13/2007 16:53:51

J: 6750310

CC: John P. Rezkoben, MD, <Second referring Dr Name>
Sidney Alexander, MD, <Referring>

THIS DOCUMENT WAS ELECTRONICALLY AUTHENTICATED BY Sidney Alexander, MD ON
06/18/2007 06:56:57



Lahey
CLINIC
Lahey Arlington
37 Broadway
Arlington, MA 02474
(781) 841-0100

MCDONOUGH, RICHARD
DOB: [REDACTED] 1945

DOS: 10/02/2007

LC#: 1875125

Document Status: Final - Receipt

LAHEY CLINIC MEDICAL CENTER - Lahey Arlington

Community Group Practice
GENERAL INTERNAL MEDICINE

MCDONOUGH, RICHARD
1875125
Visit ID: 21181834
[REDACTED] 1945

10/2/2007

LC#:

DOB:

COMPLETE PHYSICAL EXAMINATION 10/2/07: It has been a couple of years since he has been in the office. He has, however, been followed through the Lipid Clinic at Burlington during that time. Recently it was noted that his blood pressure had gone up some (160 in 6/07). He is consequently here because of that. Prior to 2005 the blood pressures have always been in the 110-120 range. He had been on a cholesterol lowering medication since the early 1990s. Within the past several months largely because of leg cramps, the statins were decreased and by two months ago he stopped them entirely. He has gained about 10 lbs in the past 2 yrs. He continues to take substantial amounts of alcohol. He has lots of stress.

Present Medications:

Occasional antihistamine.

Pepcid AC prn.

He is no longer taking either Protonix or Vytarin.

Drug Allergies: Tetracycline.

FAMILY HISTORY: [REDACTED]

SOCIAL HISTORY: A former smoker. None in the past couple of years. Takes a considerable amount of alcohol related to his work. He might, for example, take half a bottle of wine a day, 6-8 ounces of Vodka and 1 or 3

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MCDONOUGH, RICHARD
DOB: [REDACTED] 045 LCS: 1875125
DOS: 10/02/2007

Document Status: Final - Receipt

beers. There might be one day a week where he takes no alcohol. He continues to work as lobbyist at the State House, extremely busy and relatively stressed doing that. He is divorced and remarried. His present wife is eighteen years younger. He does have a gym at home and uses it perhaps twice a week.

REVIEW OF SYSTEMS: Head, Ears, Eyes, Nose Throat: Wears glasses. Has decreased hearing, but does not want to have that further evaluated. No dyspnea. No cough. No back pain. No exertional chest pain. No nausea or vomiting. No abdominal pain. Nocturia perhaps 2 or 3x per night depending on how much liquid taken before bed. Occasional constipation. No palpitation. Has mild stiffness in his hands when he first wakes up in the morning. He has had a long history of acid reflux disease. Seasonal allergies. [REDACTED]

[REDACTED] tendency towards leg cramps off and on over the years. Also in the past month or so, has had discomfort suggestive of plantar fasciitis.

PAST MEDICAL HISTORY: See Medications. Testicular biopsy in 1975. Hospitalized with viral gastroenteritis in 1990. He had a colonoscopy in 1997 with 1cm tubular adenoma. [REDACTED] Colonoscopy in 20002 was negative. MRI of the right shoulder in 2003 showed mild AC hypertrophy. A rapid sequence chest CT scan for a calcium score showed a low score at 5.

PHYSICAL EXAMINATION: WT 211. BP initially by nurse 150/95, later by me 140/80 right and left arms. Heart rate is 75 and regular. Pupils equal. Fundi minor arteriolar narrowing. Eardrums negative. Neck: Without bruits. No goiter. Lungs: Clear. Heart: A split S1. Without murmur. Abdomen: Soft without mass or tenderness. Genital: Negative. Rectal: Guaiac-negative. Prostate is soft. Pulses present to the feet. DTRs symmetrically active.

EKG today shows mild LVH.

ASSESSMENT:

- 1) Borderline hypertension - at this point, I told him to cut his alcohol intake in half, lose 10 lbs, and increase

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(781) 641-0100

MCDONOUGH, RICHARD
DOB: [REDACTED] 845 LC#: 1875125
DOB: 10/02/2007

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exercise. His wife will check his blood pressure a couple of times a week. Plan to return to me in two months. If blood pressures remain elevated at that point, will begin medication.

- 2) Elevated cholesterol - will defer to the Lipid Clinic.
- 3) Mild hearing loss.
- 4) History of gastroesophageal reflux disease.

[REDACTED]

Finally, he does note a couple of probably benign looking lesions on the face. Will consider referral to dermatology at the next visit. Also, he needs to have his colonoscopy updated. Will discuss that at his next visit as well.

Finally, he declined a flu shot.

John P Berkoben, MD

781-641-0100

JPB:sp
D: 10/03/2007 00:00:00
T: 10/03/2007 11:13:23
J: 0

CC:
John P Berkoben, MD, <Primary Care Physician>

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CARDIOLOGY SECRETARY

11-10-11 18:16

Pg: 9/15



Lahey
CLINIC

Cardiology at Lahey Burlington
41 Mall Road
Burlington, MA 01805
(781) 744-8400

MCDONOUGH, RICHARD
DOB: [REDACTED] 1945

UOS: 01/09/2008

LC#: 1875125

Document Status: Final - Receipt

LAHEY CLINIC MEDICAL CENTER - Burlington, MA.

CARDIOLOGY

1/9/08

MCDONOUGH, RICHARD 01/09/2008 LC# 1875125

DOB: [REDACTED] 1945

Second Visit ID: 21805232

Visit ID: F06338408

He feels well but has not lost weight, is working harder than ever and eating and drinking too much by his account.

He has checked his blood pressure fairly regularly. It is usually around 140, taken by his wife with home Omeron cuff.

He has tolerated Crestor and is now on 5 mg daily. Bloods will be drawn later today. He is fasting except for sips of coffee with cream but it is difficult for him to get here so we will do lipid testing anyway recognizing triglycerides may be falsely elevated.

We have validated his cuff, and it is reasonably accurate. He is about 140/80 and today it is essentially the same in both arms.

Once again he promises to do better regarding his lifestyle and eating. I will see him in six months. I will get the results of today's bloods to him.

Sidney Alexander, MD
781-744-8461

SA116

U: 01/09/2008 10:38:53

T: 01/10/2008 23:27:49

J: 7201409

CC:

Sidney Alexander, MD, <Referring>

John P. Narkobun, MD, <Second referring Dr Name>

Fax sent by : 781 744 5261

CARDIOLOGY SECRETARY

11-18-11 10:17 Pg: 9/15

Cardiology at Lahey Burlington
41 Main Road

Burlington, MA 01805
(781) 744-8460

MCDONOUGH, RICHARD
DOB: [REDACTED] 045 LG#: 1076125
DOS: 01/08/2008

1/9/08

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Alexander, MD ON 01/11/2008 09:00:30

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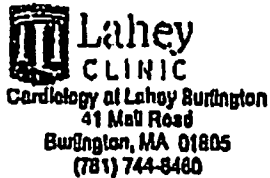
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Page 1 of 1

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CARDIOLOGY SECRETARY

11-18-11 18:18

Pg: 12/15



MCDONOUGH, RICHARD
DOB: [REDACTED] 1946

DOB: 07/09/2008

LC#: 1075125

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LAHEY CLINIC MEDICAL CENTER - Burlington, MA.

CARDIOLOGY

7/9/08

MCDONOUGH, RICHARD 07/9/2008 LC# 1075125

DOB: [REDACTED] 1946

Second Visit ID: 72990330

Visit ID: F07071477

He has not lost any weight but he continues to feel well. His latest lipids show slight improvement in the LDL cholesterol to 116. I would like it lower and he is tolerating Crestor 5 mg daily. I have raised it to 10 mg. His blood pressure today is 120/78, lower than obtained outside the office. He has not changed his eating or drinking habits. He does a lot of entertaining in his job as a lobbyist at the State House. All cardiac symptoms are denied. He has a previous coronary calcium score of only five.

His examination is normal except for mild obesity. He has adequate pedal pulses.

We will check him again in six months and place him on a treadmill.

Sidney Alexander, MD
781-744-8461

SAINT

D: 07/09/2008 12:55:24

T: 07/09/2008 22:07:04

J: 7788903

CC:

Sidney Alexander, MD, <Referring>

John P Herkoben, MD, <Second referring Dr Name>

THIS DOCUMENT HAS ELECTRONICALLY AUTHENTICATED BY Sidney Alexander, MD ON 07/10/2008 CH:17:44

Fax sent by : 781 744 5261

CARDIOLOGY SECRETARY

11-18-11 18:18

Pg: 13/15

Cardiology at Lahey Burlington
41 Mall Road

Burlington, MA 01805
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MCDONOUGH, RICHARD
DOB: [REDACTED] 1843 LC#: 1875125
DOS: 07/08/2008

7/9/08

Document Status: Final - Receipt

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